

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RANDY JOHN BELLMAN,

Defendant-Appellant.

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UNPUBLISHED

March 15, 2005

No. 250930

Macomb Circuit Court

LC No. 00-000440-FC

Before: Owens, P.J., and Sawyer and White, JJ.

PER CURIAM.

Defendant appeals as of right his resentencing to life imprisonment without parole for first-degree premeditated murder, MCL 750.316. We affirm.

I

In May, 2000, defendant was convicted by a jury of first-degree premeditated murder, first-degree home invasion, and two counts of felony-firearm. The trial court granted defendant's motion for a directed verdict, vacated the jury's conviction of first-degree murder, and entered a conviction of second-degree murder, MCL 750.317. This Court reversed the directed verdict and remanded for reinstatement of the jury's verdict of first-degree murder and resentencing consistent with first-degree murder, *People v Bellman*, unpublished opinion per curiam of the Court of Appeals, issued August 30, 2002 (Docket Nos. 231607 and 233954). The trial court reinstated defendant's first-degree murder conviction and defendant was resentenced to mandatory life imprisonment on August 5, 2003.

II

Defendant states his single question presented on appeal as whether he was denied the right to meaningful allocution due to lack of competency. In his argument, he further asserts that the court was obliged to determine his competency before proceeding with sentencing. We find no error.

Defendant did not raise this issue below. This Court reviews unpreserved claims of constitutional error and nonconstitutional error for plain error that affected defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764, 774; 597 NW2d 130 (1999). To avoid forfeiture under the plain error rule, defendant must show that: (1) an error occurred, (2)

the error was plain, i.e., clear or obvious, and (3) the plain error prejudiced substantial rights, i.e., that the error affected the outcome of the lower court proceedings. *Id.*

Assuming that the same rights regarding competency attach to a sentencing proceeding as to a trial, the court did not plainly err in failing to sua sponte raise the issue of defendant's competency to participate in sentencing because there were insufficient facts to create a bona fide doubt about defendant's competency to trigger the trial court's duty to raise sua sponte the issue of competency.

Defendant points out that prior to the resentencing proceeding, an updated PSIR was prepared that indicated that defendant had a history of psychiatric and mental health problems. According to defendant, the report demonstrates that the Michigan Department of Corrections recognized defendant's psychiatric condition because it placed him at the Huron Valley Correctional facility, which specializes in prisoners with mental concerns. The report states that, as of the date of the report, defendant suffered from "depression with psychotic tendencies" and "was taking several different medications to treat mental health problems." Therefore, defendant argues, he "may or may not have been competent at the time of resentencing."

Defendant acknowledges that he was found competent to stand trial, but points out that the evaluation was conducted years before the resentencing and that "[e]ven when a defendant is competent at the commencement of his trial, a trial court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial." *People v Matheson*, 70 Mich App 172, 180; 245 NW2d 551 (1976), quoting *Drope v Missouri*, 420 US 162, 181; 95 S Ct 896; 43 L Ed 2d 103 (1975). "[C]ompetence is an ongoing matter and is appropriately presented whenever evidence of incompetence appears, whether 'before, during or after the trial.'" *Id.*, quoting *People v Blocker*, 393 Mich 501, 510; 227 NW2d 767 (1975).

While defendant correctly states the law, here there were insufficient facts to create a bona fide doubt regarding defendant's competency. As noted, defendant was deemed competent to stand trial. Second, the updated PSIR merely stated that defendant suffered from "depression with psychotic tendencies." There is no indication in the report that this condition rendered him incapable "of understanding the nature and object of the proceedings against him or of assisting in his defense in a rational manner," or unable "to perform the tasks reasonably necessary for him to [allocute in his behalf]." MCL 330.2020(1). To the contrary, the report states that defendant was taking GED classes. Additionally, defendant ably allocuted before the court during his sentencing. The court specifically asked defendant, "Mr. Bellman, do you have anything to say before the Court passes sentence?" Defendant responded:

Only God knows how bad I feel for what happened. Only God knows how much I regret it and how much I wish it wouldn't have happened. And the prosecutor makes it out like I'm a cold-blooded killer but I'm not. I'm the – there was no witnesses to what happened. I'm the only one that knows what happened. It was an accident and I'm sorry. I would have liked to apologize to the victim's wife and family but I didn't get a chance to.

That's all I got to say.

Nothing in these statements reflected any unusual or inappropriate conduct or otherwise raised an issue of competency. Defendant's statements do not reflect that he was incapable of advising the court of any circumstances that he believed the court should have considered in imposing sentence.

Additionally, defendant asserts that he was on medication that may have affected his competency. MCL 330.2020(2) states:

A defendant shall not be determined incompetent to stand trial because psychotropic drugs or other medication have been or are being administered under proper medical direction, and even though without such medication the defendant might be incompetent to stand trial. However, when the defendant is receiving such medication, the court may, prior to making its determination on the issue of incompetence to stand trial, require the filing of a statement by the treating physician that such medication will not adversely affect the defendant's understanding of the proceedings or his ability to assist in his defense.

Because the PSIR indicated that defendant was taking several medications, it may have been prudent for the court to request a statement that such medication would not adversely affect defendant's understanding of the proceedings or his ability to assist in his defense. But the statute does not require the request for such a statement, and there was no indication that the medications affected defendant's ability to allocute.

Lastly, we observe that the sentence for first-degree murder is mandatory life imprisonment without parole. The court has no discretion in the matter. Even the most eloquent and compelling allocution could not have affected the court's sentencing decision.

Affirmed.

/s/ Donald S. Owens  
/s/ David H. Sawyer  
/s/ Helene N. White